

AMENDED IN SENATE AUGUST 1, 2016

AMENDED IN ASSEMBLY MAY 9, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1848

Introduced by Assembly Members Chiu and Quirk

(Principal coauthor: Assembly Member Burke)

**(Coauthors: Assembly Members Cooper, Cristina Garcia, and
Weber)**

(~~Coauthor: Senator Glazer~~)

(Coauthors: Senators Anderson, Glazer, Hancock, Leno, and Stone)

February 9, 2016

An act to add Section 680.1 to the Penal Code, relating to DNA evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1848, as amended, Chiu. DNA evidence.

Existing law establishes the “Sexual Assault Victims’ DNA Bill of Rights,” which, among other things, encourages a law enforcement agency assigned to investigate specified sexual assault offenses to perform DNA testing of rape kit evidence or other crime scene evidence in a timely manner to assure the longest possible statute of limitations. Existing law also requires a law enforcement agency to inform victims of certain unsolved sexual assault offenses if the law enforcement agency elects not to analyze DNA evidence within certain time limits.

This bill would require law enforcement agencies to report information regarding rape kit evidence to the department through a database established by the department. The bill would require that information

to include, among other things, the number of kits collected, the number of kits from which one or more biological evidence samples were submitted to a DNA laboratory for analysis, and the number of kits from which a probative DNA profile was generated. The bill would additionally require a public DNA laboratory, or a law enforcement agency contracting with a private laboratory, to provide a reason for not testing a sample every 120 days the sample is untested, except as specified. By imposing additional duties on local law enforcement, this bill would create a state-mandated local program.

This bill would require the department to file a report to the Legislature on an annual basis summarizing the information in its database. The bill would prohibit law enforcement agencies or laboratories from being compelled to provide any contents of the database in a civil or criminal case, except as required by a law enforcement agency's duty to produce exculpatory evidence to a defendant in a criminal case.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 680.1 is added to the Penal Code, to read:
- 2 680.1. (a) The Legislature finds and declares the following:
- 3 (1) There is a significant public interest in knowing what
- 4 percentage of rape-kit biological samples kits are analyzed for the
- 5 perpetrator's DNA profile, as well as why any untested rape-kit
- 6 samples kits are not analyzed. Currently, there is no mandatory

1 statewide tracking mechanism in place to collect and report these
2 metrics. It is the intent of the Legislature in enacting this section,
3 pursuant to recommendations by the California State Auditor to
4 the Joint Legislative Audit Committee, to correct that.

5 (2) In 2015, the Department of Justice created the Sexual Assault
6 Forensic Evidence Tracking (SAFE-T) database to track the status
7 of all sexual assault evidence kits collected in the state based on
8 voluntary data input from law enforcement agencies. It is the intent
9 of the Legislature by enacting this section to require participation
10 in that database.

11 (b) On a schedule set forth by the Department of Justice, each
12 law enforcement agency that has investigated a case involving the
13 collection of sexual assault kit evidence during the relevant period
14 of time, as determined by the department, shall report to the
15 department, through the SAFE-T database, the data required by
16 the department in its communications to law enforcement. The
17 data shall include, but are not limited to, the following:

18 (1) The number of kits collected during the period.

19 (2) The number of kits from which one or more biological
20 evidence samples were submitted to a DNA laboratory for analysis.

21 (3) The number of kits from which a probative DNA profile
22 was generated.

23 (4) The reason or reasons for not submitting evidence from a
24 given rape kit to a DNA laboratory for processing.

25 (c) After 120 days following submission of rape kit biological
26 evidence for processing, if a public DNA laboratory has not
27 conducted DNA testing, that laboratory shall provide the reasons
28 for the status in the appropriate SAFE-T data field. If the
29 investigating law enforcement agency has contracted with a private
30 laboratory to conduct DNA testing on rape kit evidence, the
31 submitting law enforcement agency shall provide the 120-day
32 update in SAFE-T. The process described in this subdivision shall
33 take place every 120 days until DNA testing occurs, except as
34 provided in subdivision (d).

35 (d) Upon expiration of a sexual assault case's statute of
36 limitations set forth in Section 803, or if a law enforcement agency
37 elects not to analyze the DNA or intends to destroy or dispose of
38 the crime scene evidence pursuant to subdivision (f) of Section
39 680, the investigating law enforcement agency shall state in writing
40 the reason the kit collected as part of that case's investigation was

1 not analyzed. This written statement relieves the investigating law
2 enforcement agency or public laboratory of any further duty to
3 report information related to that kit pursuant to this section.

4 (e) The SAFE-T database shall not contain any identifying
5 information about a victim or a suspect, shall not contain any DNA
6 profiles, and shall not contain any information that would impair
7 a pending criminal investigation.

8 (f) On an annual basis, the Department of Justice shall file a
9 report to the Legislature in compliance with Section 9795 of the
10 Government Code summarizing data entered into the SAFE-T
11 database during that year. The report shall not reference individual
12 victims, suspects, investigations, or prosecutions. The report shall
13 be made public by the department.

14 (g) Except as provided in subdivision (f), in order to protect the
15 confidentiality of the SAFE-T database information, SAFE-T
16 database contents shall be confidential and a participating law
17 enforcement agency or laboratory shall not be compelled in a
18 criminal or civil proceeding, except as required by ~~a law~~
19 ~~enforcement agency's duty to produce exculpatory evidence to a~~
20 ~~criminal defendant~~, *Brady v. Maryland* (1963) 373 U.S. 83, to
21 provide any SAFE-T database contents to any person or party
22 seeking those records or information.

23 SEC. 2. The Legislature finds and declares that Section 1 of
24 this act, which adds Section 680.1 to the Penal Code, imposes a
25 limitation on the public's right of access to the meetings of public
26 bodies or the writings of public officials and agencies within the
27 meaning of Section 3 of Article I of the California Constitution.
28 Pursuant to that constitutional provision, the Legislature makes
29 the following findings to demonstrate the interest protected by this
30 limitation and the need for protecting that interest:

31 In order to protect the privacy of victims of crime, it is necessary
32 to keep the information in the SAFE-T database confidential.

33 SEC. 3. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.